

Written Comments
Planning Commission – March 10, 2015

WCF Revisions TC1200013

BUZBY – I vote to approve the amended proposal to treat residential rural in the suburban tier in a similar way with other urban residential neighborhoods. I appreciate the many years of work of Durham staff, elected officials, residents and industry representatives. While this proposal is by no means perfect, it is still a critical step forward with significant input and all sides working to find common ground.

DAVIS – Approve.

GIBBS – Approve WCF revisions to UDO. Flexibility in height, type of tower (all types should be available for various area application), Tech, consult w/ MFR'S. For what will be serviceable public input allowed, req'd.....as long as it's not used as a "delay tactic" leading to abandonment of proposed tower location (as a matter of "Nimby" stance).

HARRIS – For as amended.

LINDA HUFF - I voted not to approve a substitute motion proposed for text amendment TC100013. The substitute motion was to recommend approval with the recommendation that text be revised to include RR (Suburban tier) within the " PDR and all other residential districts" height category, which reduces the allowed maximum height from 120 feet to the height of the base zoning district plus 20 feet. I would have voted **for** the original motion that did not selectively treat some RR properties differently from others. I believe the original text amendment goes far and is very important to be put in place now and I hope the elected officials will do that.

The substitute amendment is not necessary. If I understand the language regarding setbacks correctly, the large cell towers that could occur elsewhere in RR zoning, could rarely be built for matters of space on any Suburban Tier property zoned rural residential. I take the following to mean that the setbacks in PDR and residential districts (including RR) **cannot** be reduced at all:

"5.3.3.N.e.1.b.i The minimum setback of the WCF from each property line shall be 120% of the height of the tower or 85 ft., whichever is greater. **Except in PDR and residential districts**, a reduction in the minimum setbacks may be approved through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit. "

The substitute amendment is unfair to all concerned. If there is space to locate a tall cell tower with its concomitant setbacks on an RR zoned property in the Suburban Tier, then that property owner should have exactly the same choices and protections that owners in RR zoned developments, such as Lake Winds, Red Mountain Estates, Black Horse Run, etc. in the Rural Tier are afforded.

Tall towers serve the public better than shorter ones. Tall towers project a signal over a more varied terrain than a short tower—that is over taller hills, deeper valleys; the taller tower can accommodate more WCFs than can a short tower so we should need fewer of them. For those people who probably wrongly worry about radiation from these towers, there is less radiation at ground level from a tall tower than there is from a short one. So in my opinion the more tall towers we can locate the better served we are and we need these towers now.

The original text amendment without the substitution is solid. Thank you to the Planning Department and the concerned citizens who worked hard to craft this document. It is my hope its passage without the substitution motion will be expedited forthwith.

MILLER - The cell-tower ordinance rewrite is a complicated document with many variables and moving parts. The planning staff has worked under considerable pressure to create a set of rules for Durham that that meets the requirements of the FCC and State law and satisfies the concerns of neighborhoods and the industry. INC has been concerned about a number of issues including tower height, setbacks, screening, safety, and insurance. The INC has also been insistent that when a cell tower, whether concealed or non-concealed, is to be located in a residential neighborhood, neighbors should be notified and have an opportunity to be heard. In Durham, in the cell tower context, the preferred public review is before the board of adjustment on an application for a use permit. A legislative approach would be unworkable and inconsistent with the requirement of federal rules. The Planning Department has been sensitive to INCs demand realizing all the while that the industry prefers a faster, simpler administrative review which does not involve public notice or a hearing.

The Proposed New Ordinance

a) The new draft says that concealed freestanding WCFs only require administrative approval; but it also says that all monopines and unipoles of any height require a use permit from the board of adjustment. Only other, non-specified freestanding concealed WCFs under 60 feet in height at time of approval can get by with administrative approval. Currently, I am not aware of another commonly used form of concealed cell tower. This means that in all but very unusual circumstances, approval of freestanding concealed cell towers in residential neighborhoods will occur only after notice to neighbors and a hearing before the Board of Adjustment. This is good.

b) The maximum height for concealed towers in all residential zones except Rural Residential will be the maximum height in the underlying residential district plus 20 feet. To understand this, it is useful to know that the maximum height in single-family districts is 35 feet. In the Rural Residential district, the maximum height for a concealed cell tower would be 120 feet under the new draft. Much of Durham County is zoned RR. The district allows residential and agricultural uses. The district is mostly confined to the rural tier, but there is some RR zoning in the suburban tier. RR neighborhoods within the suburban tier are often typical suburban neighborhoods with no rural character. In these places, RR in the suburban tier, the maximum height for concealed freestanding towers should be the same as it is for

other residential zones – 35’ plus 20 feet. I do not believe that this would significantly impact the availability of sites for WCFs. More on this in the recommendation below.

c) All non-concealed towers, monopines and unipoles must have a use permit from the Board of Adjustment. This means notice to neighbors and an opportunity to be heard before the Board of Adjustment.

d) The maximum height for non-concealed towers will be 180 feet in non R-zones. It will be 120 feet in RS-20 and RR. Such towers are not allowed at all in all other residential zones.

e) The setback for all freestanding WCFs is 120% of tower height or 85 feet, whichever may be greater. This applies even to non-concealed towers in RR and RS-20 which must reside on a 5 acre parcel. When a freestanding WCF of any sort is in an R-zone, the setback cannot be reduced. The setback for towers located in non-R zones can be reduced with a permit from the board of adjustment. These are sensible provisions.

The Planning Commission’s Recommendation

INC would like for the draft to be changed to say that when a cell tower of any kind is located in an RR district in the suburban tier, the maximum height allowed will be the maximum height in the district (35’) plus 20 feet. This will treat most neighborhoods in the RR zone the same as other suburban neighborhoods. I agree with this position and based upon it, I framed the motion adopted by the Planning Commission. The principal change to the current draft would involve striking 5.3.3.N.4.e(1)(a)ii and renumbering iii and iv to ii and iii. In the new ii, the words “Other than the RR District” should be deleted from the heading. Other, minor conforming changes may be required, but this would be the main text change. With this change, I urge the council to adopt these badly needed new zoning regulations.

My thanks go to Michael Stock of the Planning Department staff who has so patiently worked with the stakeholders over the past few months. This was now small task and it was not made easier by the arrival of new FCC rules and a parallel request for separate treatment of unipoles.